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10 BEFORE THE
11 BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation)	No. 1B-94-35553
Against:)	
14 MICHAEL D. MARKS, D.P.M.)	<u>ACCUSATION</u>
964 College Avenue)	
15 Elmira, New York 14901)	
Certificate No. E-1259)	
16 Respondent.)	

17
18 James H. Rathlesberger, for causes for discipline,
19 alleges:
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21 1. Complainant James H. Rathlesberger makes and files
22 this accusation in his official capacity as Executive Officer of
23 the Board of Podiatric Medicine (hereinafter referred to as
24 "Board"), Division of Allied Health Professions, Medical Board of
25 California, Department of Consumer Affairs, State of California.
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1 2. On August 29, 1967, the Board of Podiatric Medicine
2 issued certificate number E-1259 to Michael D. Marks, D.P.M., a
3 certificate to practice podiatric medicine. The license will
4 expire June 30, 1995, unless renewed.

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6 3. Under Business and Professions Code section 2497,
7 the Board may order the denial of an application for, or the
8 suspension of, or the revocation of, or the imposition of
9 probationary conditions upon, a certificate to practice podiatric
10 medicine for any of the causes set forth in Article 12
11 (commencing with Section 2220) in accordance with section 2222 of
12 that code.

13 Under Business and Professions Code section 2222, the
14 Board may order the revocation, suspension, or other restriction
15 of, or the modification of that penalty and the reinstatement of
16 any certificate of a doctor of podiatric medicine within its
17 authority.

18 Under Business and Professions Code section 2427, a
19 license may be renewed at any time within five years after its
20 expiration on filing an application for renewal on a form
21 prescribed by the licensing authority and payment of all accrued
22 renewal fees and any other fees required by section 2424 of that
23 code.

24 Under Business and Professions Code section 2497.5, the
25 Board may request the administrative law judge to direct any
26 licensee found guilty of unprofessional conduct to pay to the

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1 Board a sum not to exceed the actual and reasonable costs of the
2 investigation and prosecution of the case.

3
4 4. Respondent has subjected his certificate to
5 discipline under Business and Professions Code section 2305 on
6 the grounds of unprofessional conduct in that on June 23, 1993,
7 the State of New York, Office of Professional Discipline, State
8 Board of Podiatry suspended respondent's license to practice
9 podiatry in that state for two years and fined him \$5,000 for
10 practicing beyond the authorized scope of the profession of
11 podiatry when he performed chiropractic adjustments on two
12 patients. The suspension was stayed and respondent was placed on
13 probation for two years with terms. Attached as Exhibit A and
14 incorporated by reference is a true and correct copy of the
15 Original Vote and Order and the Application for Consent Order
16 from the State of New York.

17
18 WHEREFORE, complainant prays a hearing be had and that
19 the Board of Podiatric Medicine make its order:

20 1. Revoking or suspending podiatric medicine
21 certificate number E-1259, issued to Michael D. Marks, D.P.M.


22 2. Ordering Michael D. Marks, D.P.M. to pay to the
23 Board of Podiatric Medicine its costs for investigation and
24 prosecution according to proof at the hearing, pursuant to
25 Business and Professions Code section 2497.5.

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1 3. Taking such other and further action as may be
2 deemed proper and appropriate.

3 DATED: January 10, 1995

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5 JAMES H. RATHLESBERGER
6 Executive Officer
7 Board of Podiatric Medicine
8 Department of Consumer Affairs
9 State of California

10 Complainant

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27 (SM 1/4/95)

EXHIBIT A



The University of the State of New York

IN THE MATTER

OF

MICHAEL D. MARKS
(Podiatrist)

ORIGINAL
VOTE AND ORDER
NO. 13701

Upon the application of MICHAEL D. MARKS, under Calendar No. 13701, which application is made a part hereof, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (July 23, 1993): That the application of MICHAEL D. MARKS, respondent, for a consent order be granted; and that Deputy Commissioner Henry A. Fernandez be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

MICHAEL D. MARKS (13701)

IN WITNESS WHEREOF, I, Henry A. Fernandez, Deputy Commissioner, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand, at the City of Albany, this 23rd day of July, 1993.



HENRY A. FERNANDEZ
DEPUTY COMMISSIONER

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL DISCIPLINE
STATE BOARD FOR PODIATRY
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IN THE MATTER

of the

Disciplinary Proceeding

against

MICHAEL D. MARKS

**APPLICATION FOR
CONSENT ORDER**

CAL. NO. 13701

who is currently licensed to practice
as a podiatrist in the State of New York.
-----X

STATE OF NEW YORK)

ss:

COUNTY OF)

MICHAEL D. MARKS, being duly sworn, deposes and says:

That on or about January 31, 1968 I was licensed to practice as a podiatrist in the State of New York, having been issued license No. 002231 by the New York State Education Department.

I am currently registered with the New York State Education Department to practice as a podiatrist in the State of New York from an address at: 964 College Avenue, Elmira, New York 14901.

That I have been charged with one (1) specification of professional misconduct, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A".

I do not contest the aforementioned specification of professional misconduct, charging me with practicing beyond the scope of the profession of podiatry, (in employing chiropractic adjustments for his podiatric patients).

MICHAEL D. MARKS

I hereby agree to the penalty that my license as a podiatrist in the State of New York be suspended for two (2) years; that execution of said suspension be stayed; that I be placed on probation for a period of two (2) years under the terms set forth in the exhibit annexed hereto, made a part hereof and marked as Exhibit "B"; and that I be fined the sum of five thousand (\$5,000.00) dollars, said fine to be paid as set forth in the aforesaid terms of probation.

I hereby make this application to the Board of Regents and request that it be granted.

I understand that in the event that the Board of Regents denies the application, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me. Such application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the disciplinary proceeding, and such denial by the Board of Regents shall be without prejudice to the continuance of the disciplinary proceeding and the final determination by the Board of Regents pursuant to the provisions of the Education Law.

I agree that in the event the Board of Regents grants my application, as set forth herein, an Order may be issued in accordance with the same.

MICHAEL D. MARKS

No promises of any kind were made to me. I am making this application of my own free will and accord and not under duress, compulsion, or restraint of any kind or manner.


Respondent

Sworn to before me this

25 day of May, 1993


NOTARY PUBLIC

NANCY V. MEADE
Notary Public, State of New York
Qualified in Cremung Co. No. 4936999
Commission Expires July 5, 1994

Notary Public, State of New York
Qualified in Cremung Co. No. 4936999
Commission Expires July 5, 1994

EXHIBIT "A"

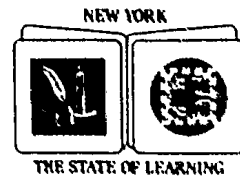
MICHAEL D. MARKS

SPECIFICATION OF PROFESSIONAL MISCONDUCT

Respondent is charged with practicing beyond the authorized scope of the profession of podiatry within the purview and meaning of Section 6509(2) of the Education Law of the State of New York, in that:

A. On or about March 3, 1992, Respondent while practicing the profession of podiatry, performed a chiropractic adjustment, known as the Atlas Wedge, on his podiatric patient T.F.

B. On or about April 4, 1992, Respondent, while practicing the profession of podiatry, performed a chiropractic adjustment, testing arm and neck strength, on his podiatric patient E.D.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12230

OFFICE OF PROFESSIONAL CREDENTIALING
DIVISION OF PROFESSIONAL LICENSING SERVICES

STATE OF NEW YORK)

SS:

COUNTY OF ALBANY)

In accordance with the Civil Practice Law and Rules Article 45, Rule 4540, I, Rita Lee St. John, Senior Clerk in the Division of Professional Licensing Services of the New York State Education Department, have caused this certificate to be prepared. I certify that I have legal custody of the official original records of the Division of Professional Licensing Services and I attest that the attached are true and correct copies of the original documents in our files relating to **MICHAEL DAVID MARKS**.

Witness my hand and the seal of the New York State Education Department this 19 July, 1994.

Rita Lee St. John, Senior Clerk
Professional Licensing Services

DATED
07/19/94